

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 2008 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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PARIMALKUMAR LALURAM RATNOTAR & 1 - Petitioner(s)
Versus
STATE OF GUJARAT THR'PRINCIPAL SECRETARY(APPEAL & 2 -
Respondent(s)

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Appearance :

MR DC DAVE for Petitioner(s) : 1 - 2.
MS MAITHILI MEHTA ASST GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
MR NILESH A PANDYA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 19/04/2006****ORAL JUDGMENT**

1. Rule. Ms.Maithili Mehta, learned AGP waives

service of rule on behalf of the respondent authorities and Shri N.A.Pandya, learned advocate waives service of rule on behalf of the private respondents. With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

2. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat dated 7.12.2005 passed in Revision Application No.50 of 2004 in dismissing the same and confirming the order passed by the Collector, Vadodara dated 31.8.04 passed in RTS Revision Application No.4 of 2004 by which the Collector, Vadodara has partly allowed the said revision application quashing and setting aside the orders passed by the Deputy Collector, Vadodara dated 5.2.03 passed in RTS

Appeal No.28 of 2001 as well as the order passed by the Mamlatdar, Vadodara (City) dated 23.2.2001 in certifying the Entry No.7184 dated 1.11.1999, by which, the name of the petitioners were mutated in the revenue record on the basis of the registered sale deed.

3. The dispute is with regard to the land bearing Survey No.633 admeasuring Hectare 0-62-73 Are situated at village Sama, Taluka Vadodara City and the said land has been purchased by the petitioner by the registered sale deed dated 10.8.1983. Necessary entry in the revenue record was mutated vide Entry NO.7184 dated 1.11.1999 and the said entry was disputed entry and therefore, after holding necessary inquiry as required under Section-135 of the Bombay Land Revenue Code. 1879, the Mamlatdar, Vadodara (City) vide its orders dated 23.2.2001 passed in order being ADM/ RTS/Disputed Case No.23 of 2000 directed to certify the said entry overruling the

objections given by the respondent No.3 herein - original owner. Being aggrieved and dissatisfied with the order passed by the Mamlatdar, Vadodara dated 23.2.2001 in certifying the Entry No.7184, the respondent No.3 herein preferred RTS Appeal No.28 of 2001 before the Deputy Collector, Vadodara and the Deputy Collector, Vadodara by its judgment and order dated 5-2-2003 dismissed the said appeal. Being aggrieved and dissatisfied with the aforesaid two orders, the respondent No.3 preferred revision application before the Collector, Vadodara and the Collector, Vadodara by its order dated 31.8.2004 partly allowed the said revision application RTS / Revision Application / 4 / 2004 and remanded the matter to the Mamlatdar for deciding the question with regard to entry after holding necessary inquiry whether by purchasing the land in question by the petitioners, there will be a breach of the Bombay Prevention of Fragmentation Act or not, and quashing and setting aside the order passed by

the Mamlatdar as well as Deputy Collector certifying the Entry No.7184. Being aggrieved and dissatisfied with the order passed by the Collector, Vadodara dated 31.8.2004 passed in RTS Revision Application No.RA/4 / 2004 the petitioners preferred revision application before the Principal Secretary (Appeals), Revenue Department, State of Gujarat being Revision Application No.50 of 2004 and the Principal Secretary (Appeals), Revenue Department, State of Gujarat by its judgment and order dated 7.12.2005 dismissed the said revision application confirming the order passed by the Collector, Vadodara dated 31.8.2004. Being aggrieved and dissatisfied with the order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat dated 7.12.2005 passed in Revision Application No.50 of 2004, the petitioners have preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

4. Shri D.C.Dave, learned advocate appearing on behalf of the petitioners – purchasers of the land in question has vehemently submitted that the order passed by the Collector, Vadodara quashing and setting aside the orders passed by the Mamlatdar as well as Deputy Collector in certifying the Entry No.7184 in favour of the petitioner and remanding the matter and to hold the inquiry whether by purchasing the land in question by the petitioners, there will be breach of Bombay Prevention of Fragmentation Act or not, is absolutely without jurisdiction. He has submitted that while deciding the RTS proceedings under the Bombay Land Revenue Code and considering the dispute with regard to entry on the basis of the registered sale deed, the Collector could not have directed to hold inquiry whether there will be breach of Bombay Prevention of Fragmentation Act or not, and thereby ought not to have set aside the entry which was on the

basis of registered sale deed. Relying upon the judgment of this Court in case of GANDABHAI DALPATBHAI PATEL V. STATE OF GUJARAT AND OTHERS reported in 2005 (2) GLR 1370 as well as in case of JHAVERBHAI SAVJIBHAI PATEL THROUGH POA HOLDER ASHOK J. PATEL V. KANCHANBEN NATHUBHAI PATEL AND OTHERS reported in 2005 (3) GLH 657, Shri Dave, learned advocate appearing on behalf of the petitioners has submitted that the revenue authority is required to give effect to the registered sale deed and making necessary entry in the revenue record on the basis of the said registered sale deed and if there is any dispute, in that case, the said entry would be subject to ultimate outcome of the said dispute. He has also relied upon the judgment of this Court in case of GANDABHAI DALPATBHAI PATEL V. STATE OF GUJARAT AND OTHERS as well as in case of JHAVERBHAI SAVJIBHAI PATEL THROUGH POA HOLDER ASHOK J. PATEL V. KANCHANBEN NATHUBHAI PATEL AND OTHERS (Supra) in support of his submission that while deciding

the RTS proceedings, the authority is not justified in considering the breach of any other law and therefore, it is requested to allow the present Special Civil Application and restore the order passed by the Mamlatdar as well as the Deputy Collector and the Entry No.7184.

5. Per contra, Shri Nilesh Pandya, learned advocate appearing on behalf of the private respondents has submitted that the order passed by the Collector was remand order and the same is rightly confirmed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat. He has submitted that basically the order of remand has been challenged by the petitioners in the present Special Civil Application and this Court may not exercise the powers under Articles 226 and 227 of the Constitution of India and interfere with the order of remand. He has also further submitted that in fact, the proceedings are already initiated by the competent authority

for the alleged breach of Bombay Prevention of the Fragmentation Act and therefore, it is requested to dismiss the present Special Civil Application.

6. Ms.Maithili Mehta, learned AGP has supported the impugned judgment and order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat as well as the Collector.

7. Heard the learned advocates appearing on behalf of the parties.

8. It is not in dispute that the petitioners are the purchaser of the land in question which they have purchased by the registered sale deed and under the provisions of the Bombay Land Revenue Code, necessary entry is required to be made in the revenue record on the basis of the registered sale deed. It appears from the record that the

private respondents herein objected to the entry which was on the basis of the registered sale deed on the ground that there will be a breach of the Bombay Prevention of Fragmentation Act. It is required to be noted that when private respondent has sold the land, how he can object to making entry on the basis of the registered sale deed which was executed by him and/or take benefit of his own wrong. Be that it may. As held by this Court in more than one decisions in case of GANDABHAI DALPATBHAI PATEL V. STATE OF GUJARAT AND OTHERS as well as in case of JHAVERBHAI SAVJIBHAI PATEL THROUGH POA HOLDER ASHOK J. PATEL V. KANCHANBEN NATHUBHAI PATEL AND OTHERS (Supra), the revenue authority is required to make necessary entry in the revenue record on the basis of the registered sale deed and if there is any dispute and / or any other proceedings for breach of any other law, said entry can be made subject to ultimate outcome of the said proceedings. This Court has also held in

aforesaid cases i.e GANDABHAI DALPATBHAI PATEL V. STATE OF GUJARAT AND OTHERS as well as JHAVERBHAI SAVJIBHAI PATEL THROUGH POA HOLDER ASHOK J. PATEL V. KANCHANBEN NATHUBHAI PATEL AND OTHERS (Supra), the revenue authority while dealing with the RTS proceedings has no jurisdiction to consider the breach of any other law. Under the circumstances, the Collector, Vadodara was not justified in remanding the matter and quashing and setting aside the entry and directing the Mamlatdar to consider whether by aforesaid sale in favour of the petitioner, there will be breach of Bombay Prevention of Fragmentation Act and the said order ought not to have been confirmed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat. Under the circumstances, both the impugned orders are required to be quashed and set aside and the entry in favour of the petitioner is required to be restored and confirmed. However, in view of the fact that proceedings are already initiated

and are pending for breach of the Bombay Prevention of Fragmentation Act, it is clarified and observed that the aforesaid entry in favour of the petitioners would be subject to the ultimate outcome of the said proceedings before the Competent Authority under the proceedings of the Bombay Prevention of Fragmentation Act and the Revenue Authorities are directed to make an additional entry that the aforesaid entry in favour of the petitioners which is now restored, would be subject to the ultimate outcome of the proceedings pending before the competent authority under the provisions of the Bombay Prevention of Fragmentation Act.

9. Rule is made absolute to the aforesaid extent. However, there shall be no order as to costs.

[M.R.Shah, J.]

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